

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRANDY LEA RUDDER,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS,

Defendant.

Case No. C24-5400-JCC-MLP

REPORT AND RECOMMENDATION

**I. INTRODUCTION**

This is a civil rights action proceeding under 42 U.S.C. § 1983. Plaintiff Brandy Rudder is currently confined at the Washington Corrections Center for Women (“WCCW”) in Gig Harbor, Washington. She is proceeding with this action *pro se* and *in forma pauperis*. Service has not been ordered. This Court, having reviewed Plaintiff’s amended complaint, and the balance of the record, concludes that Plaintiff has not stated any claim upon which relief may be granted under § 1983. The Court therefore recommends that Plaintiff’s amended complaint and this action be dismissed, without prejudice, under 28 U.S.C. § 1915A(b)(1) and 28 U.S.C. § 1915(e)(2)(B).

## II. BACKGROUND

On May 23, 2024, Plaintiff submitted to the Court for filing a civil rights complaint under 42 U.S.C. § 1983, in which she identified three claims for relief. (*See* dkt. # 1.) In the first count of her complaint, Plaintiff alleged that she was denied adequate medical care for a knee injury she sustained in 2012 during a prior period of incarceration at WCCW. (Dkt. # 5 at 4-7.) In count two of her complaint, Plaintiff alleged that she was subjected to unsafe conditions during her confinement at WCCW in 2012. (*Id.* at 33-35.) Specifically, Plaintiff claimed that she was assigned to a work crew tasked with moving furniture, boxes, and garbage in and out of a building that was “full of asbestos” and she was not provided any PPE.<sup>1</sup> (*See id.*) Finally, in count three of her complaint, Plaintiff alleged that she was subjected to “torture” when she was placed in a dry cell upon her readmission to WCCW in April 2024, and that she had since been denied adequate medical and mental health care for the trauma she suffered as a result of that placement. (*Id.* at 35-39.)

Plaintiff identified the Washington State Department of Corrections (“DOC”) as the only Defendant in her complaint. (*See* dkt. # 5 at 1, 3.) She requested relief in the form of damages and a change to DOC’s dry cell policy. (*Id.* at 100.)

After reviewing Plaintiff’s complaint, this Court concluded that the complaint was deficient in various respects that precluded the Court from directing service of the pleading on Defendant. Thus, on June 27, 2024, the Court issued an Order declining to serve Plaintiff’s complaint and granting her leave to file an amended complaint correcting deficiencies identified in the Order. (Dkt. # 6.)

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<sup>1</sup> The Court presumes PPE is a reference to personal protective equipment.

1 Among the deficiencies identified by the Court was that Plaintiff's first two claims, those  
2 arising out of her confinement at WCCW in 2012, appeared to be barred by the statute of  
3 limitations applicable to cases brought under § 1983. (Dkt. # 6 at 4.) The Court also noted that  
4 the lone Defendant identified in Plaintiff's complaint, the DOC, was not subject to suit in this  
5 civil rights action. (*See id.* at 4-5.) The Court advised Plaintiff that if she wished to pursue this  
6 action, she would need to identify the individual DOC employees who caused the harm alleged  
7 in her complaint. (*Id.* at 5.) Finally, with respect to Plaintiff's claim that she was subjected to  
8 "torture" when she was placed in a dry cell in April 2024, and had since been denied adequate  
9 medical and mental health treatment for the trauma she suffered as a result of that placement,  
10 Plaintiff was advised that the claim implicated her rights under the Eighth Amendment but she  
11 had not alleged a plausible claim for relief because she had not identified any individuals who  
12 were deliberately indifferent to her health or safety. (*Id.* at 5-6.)

13 Plaintiff was given thirty days to file an amended complaint correcting the noted  
14 deficiencies and was advised that if she failed to timely file an amended complaint, or to correct  
15 the deficiencies identified by the Court, the Court would recommend this action be dismissed  
16 under 28 U.S.C. § 1915A(b)(1) and 28 U.S.C. § 1915(e)(2)(B).

17 On July 11, 2024, Plaintiff filed an amended complaint in this action. (Dkt. # 7.) Plaintiff  
18 identifies a single ground for relief in her amended pleading. Specifically, Plaintiff alleges that  
19 her Eighth Amendment rights were violated when she was placed in a dry cell upon her arrival at  
20 WCCW in April 2024, and that she has since been denied adequate medical and mental health  
21 care for the trauma she suffered as a result of that placement. (*Id.* at 3, 12-18.) Plaintiff once  
22 again identifies only the DOC as a Defendant in this action.

### III. DISCUSSION

#### A. Legal Standards

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). The Court must “dismiss the complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

Rule 8(a) of the Federal Rules of Civil Procedure provides that in order for a pleading to state a claim for relief it must contain a short and plain statement of the grounds for the court’s jurisdiction, a short and plain statement of the claim showing that the pleader is entitled to relief, and a demand for the relief sought. The statement of the claim must be sufficient to “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47 (1957). The factual allegations of a complaint must be “enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In addition, a complaint must allege facts to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In order to sustain a cause of action under 42 U.S.C. § 1983, a plaintiff must show that (1) she suffered a violation of rights protected by the Constitution or created by federal statute, and (2) the violation was proximately caused by a person acting under color of state law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The causation requirement of § 1983 is satisfied only if a plaintiff demonstrates that a defendant did an affirmative act, participated in another’s affirmative act, or omitted to perform an act which he or she was legally required to do

1 that caused the deprivation complained of. *Arnold v. Int’l Bus. Mach. Corp.*, 637 F.2d 1350,  
2 1355 (9th Cir. 1981) (citing *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978)). “The  
3 inquiry into causation must be individualized and focus on the duties and responsibilities of each  
4 individual defendant whose acts or omissions are alleged to have caused a constitutional  
5 deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988).

6 **B. Analysis**

7 *1. Defendant*

8 Plaintiff once again identifies the DOC as the lone Defendant in this action. As Plaintiff  
9 was previously advised, the United States Supreme Court has made clear that states and state  
10 agencies are not “persons” subject to suit under § 1983. *See Will v. Michigan Department of*  
11 *State Police*, 491 U.S. 58, 64 (1989). In addition, it is well established that, under the Eleventh  
12 Amendment, a nonconsenting state is immune from suits brought in federal courts by its own  
13 citizens. *See Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974). The State of Washington has not  
14 waived its Eleventh Amendment immunity for federal civil rights actions. *See Whiteside v. State*  
15 *of Wash.*, 534 F.Supp. 774, 778 (E.D. Wash. 1982). Accordingly, the DOC, which is a state  
16 agency, is not subject to suit in this civil rights action.

17 *2. Inadequate Medical and Mental Health Care*

18 Plaintiff alleges that her Eighth Amendment rights were violated when she was placed in  
19 a dry cell at WCCW in April 2024, and that she has since been denied adequate medical and  
20 mental health treatment for the trauma she alleges she suffered as a result of that placement.  
21 (Dkt. # 7 at 3, 12-18.)

22 The Eighth Amendment imposes a duty upon prison officials to provide humane  
23 conditions of confinement. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). This duty includes

1 ensuring that inmates receive adequate food, clothing, shelter, and medical care, and taking  
2 reasonable measures to guarantee the safety of inmates. *Id.* In order to establish an Eighth  
3 Amendment violation, a prisoner must satisfy a two-part test containing both an objective and a  
4 subjective component. The Eighth Amendment standard requires proof that: (1) the alleged  
5 wrongdoing was objectively “harmful enough” to establish a constitutional violation; and (2) the  
6 prison official acted with a sufficiently culpable state of mind. *Id.* at 834.

7 The objective component of an Eighth Amendment claim is “contextual and responsive  
8 to ‘contemporary standards of decency.’” *Hudson v. McMillian*, 503 U.S. 1, 8 (1992) (quoting  
9 *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). The state of mind requirement under the subjective  
10 component of the Eighth Amendment standard has been defined as “deliberate indifference” to  
11 an inmate’s health or safety. *Farmer*, 511 U.S. at 834. Under the “deliberate indifference”  
12 standard, a prison official cannot be found liable for denying an inmate humane conditions of  
13 confinement unless the official knows of and disregards an excessive risk to inmate health or  
14 safety. *Id.* at 837. “[T]he official must both be aware of facts from which the inference could be  
15 drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.*

16 Plaintiff fails to allege a plausible Eighth Amendment claim in her amended pleading  
17 because, as in her original complaint, Plaintiff does not identify any individuals who were  
18 deliberately indifferent to her health or safety. Plaintiff was advised in the Court’s Order  
19 declining to serve her original complaint that in order to pursue her Eighth Amendment claim  
20 she would have to specifically identify the individuals whom she believes were deliberately  
21 indifferent to her medical and/or mental health needs, and she would have to allege specific facts  
22 demonstrating that each named individual personally participated in causing her harm of federal  
23 constitutional dimension. (Dkt. # 6 at 6.) Because Plaintiff has not identified any individuals who

1 personally participated in the violation of her constitutional rights, her Eighth Amendment claim  
2 necessarily fails.

3 **C. Motion Requesting Hardship**

4 The Court recently received from Plaintiff a document in which she requests that the  
5 filing fee for this action be waived, delayed, or reduced. (*See* dkt. # 8 at 1-2.) Plaintiff indicates  
6 in her submission that she has four civil suits pending, and that the 20 percent of her monthly  
7 income being taken from her prison account each month for each case presents a hardship as it  
8 does not leave her sufficient funds to buy hygiene items, envelopes, and food necessary to  
9 accommodate her special diet. (*See id.*) Plaintiff asks that she be allowed to pay only \$5.00 per  
10 case each month or, in the alternative, a total of 20 percent each month for all cases instead of for  
11 each case. (*See id.*)

12 Pursuant to 28 U.S.C. § 1915(a), the Court may authorize the commencement of an  
13 action without the prepayment of fees. However, when a prisoner is granted leave to proceed  
14 without the prepayment of fees, the prisoner-plaintiff is still required to pay the full amount of  
15 the filing fee; he or she is simply permitted to do so over time rather than paying the entirety of  
16 the fee up front. *See* 28 U.S.C. § 1915(b). As a part of her *in forma pauperis* application, Plaintiff  
17 signed an Acknowledgement and Authorization form which makes clear that she is responsible  
18 for payment of the full filing fee under § 1915, and that she is required to make monthly  
19 payments equal to 20 percent of her preceding month's income until the filing fee is paid in full.  
20 (*See* dkt. # 3.) The *in forma pauperis* statute requires such payments and contains no exceptions  
21 that would permit waiver or reduction of such payments. *See* 28 U.S.C. § 1915(b)(2).  
22 Accordingly, Plaintiff's request for waiver of the filing fee or reduction of the monthly payments  
23 must be denied.

#### IV. CONCLUSION

Based on the foregoing, this Court recommends that Plaintiff's amended complaint and this action be DISMISSED, without prejudice, under 28 U.S.C. § 1915A(b)(1) and 28 U.S.C. § 1915(e)(2)(B), for failure to state any claim upon which relief may be granted under § 1983. This Court further recommends that Plaintiff's request for waiver of the filing fee or reduction in her monthly payments (dkt. # 8) be DENIED. Finally, the Court recommends that this dismissal be counted as a strike under 28 U.S.C. § 1915(g). A proposed Order accompanies this Report and Recommendation.

Objections to this Report and Recommendation, if any, should be filed with the Clerk and served upon all parties to this suit not later than **fourteen (14) days** from the date on which this Report and Recommendation is signed. Failure to file objections within the specified time may affect your right to appeal. Objections should be noted for consideration on the District Judge's motions calendar **fourteen (14) days** from the date they are filed. Responses to objections may be filed by **the day before the noting date**. If no timely objections are filed, the matter will be ready for consideration by the District Judge on **September 17, 2024**.

DATED this 27th day of August, 2024.



MICHELLE L. PETERSON  
United States Magistrate Judge